

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1175 of 1998

in

SPECIAL CIVIL APPLICATION No 6516 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE A.L.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHADRABALA PRABHASHANKAER JOSHI

Versus

STATE OF GUJARAT

Appearance:

MR ND NANAVATI for MR ANSHIN H DESAI for Appellant
MR ANANT S DAVE for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE A.L.DAVE

Date of decision: 09/02/99

ORAL JUDGEMENT (Per Patel, J.)

The present appeal is preferred by original petitioner against the order of dismissal of Special Civil Application No. 6516 of 1998, passed by the learned Single Judge on 16.9.1998.

2. The appellant, a Staff Nurse at Junagadh Civil Hospital was transferred to Manavdar Health Centre, which is at a distance of about 40 kms. from Junagadh, by order dated 29.7.1998. The appellant approached this Court by filing the aforesaid petition challenging the transfer order.

3. Mr. N.D. Nanavati, learned counsel appearing in the matter for the appellant submitted that in the instant case, the petitioner is victimised. According to his submission, a Member of the Legislative Assembly had no business to quarrel with the staff of the Hospital on duty, and if he had any complaint, he should have approached the head of the hospital for taking appropriate action. He further submitted that the order is malafide and at the dictate of the M.L.A. He further submitted that the transfer order is the outcome of the letter written by the M.L.A., which is at page 38 of this compilation. Mr. Nanavati submitted that the M.L.A. has reproduced in the letter certain words alleged to have been uttered by the appellant against the party to which the said MLA belongs to and as the transfer order is based on the letter written by the M.L.A, the transfer amounts to punishment and victimisation and there is non-application of mind to the facts of the case by the concerned authorities. He further submitted that the order is passed is contravention of the guidelines issued by the State of Gujarat, vide page 24 of the compilation, which says that ordinarily, a person should not be transferred during continuance of education of children. Learned counsel submitted that there was no urgency to pass the transfer order by telegram and the education of child of the appellant, as stated in the aforesaid guideline, ought to have been taken into consideration before passing the transfer order.

4. We first inquired from the Assistant Government Pleader as to whether there is a vacancy in any other hospital nearby so that the appellant can be accommodated and we are informed by learned Assistant Government Pleader that as desired by the Court hearing the appeal earlier, he inquired prior to Diwali and there was no vacancy at that time. Mr. Nanavati, however states today that there is a vacancy in the T.B. Hospital at Junagadh.

5. The petitioner has pointed out in the petition (paragraphs 3.2 and 3.3) that the petitioner worked in Junagadh Civil Hospital for 12 years and thereafter she was transferred to Mangarol Community Health Centre where she worked for about three years. Thereafter she was again transferred to Junagadh Civil Hospital on request.

6. On 2.6.1998 the local M.L.A. visited the Hospital and upon finding some irregularities, he addressed a detailed letter to the Hon'ble Minister, Health and Family Welfare. The letter is in detail. Mr. Nanavati read the contents of the letter. Copy of the affidavit filed by Dr. Kirit A Mithawala, Chief Medical Officer-cum-Civil Surgeon of Junagadh Civil Hospital in the writ petition is placed in this compilation at page 33. In paragraph 5(A) of the affidavit, it is stated that "the petitioner is transferred on account of administrative exigency arised (sic. arose) out of unruly behaviour of the petitioner". It is further pointed out in the affidavit that because of support of a Journalist named in the affidavit and other anti-social elements, he was unable to take any steps against the petitioner and the petitioner was spoiling the entire atmosphere in the hospital. In paragraph 7 of the affidavit, the said Doctor has stated that the incident which the MLA has referred, took place in his presence when he was taking a round with the said MLA and Dr. Ashwin R. Viradia, full-time Suregon. It is stated that the petitioner was caught red-handed while treating a patient in the nursing room instead of ward and that too without admitting the patient into the hospital and without any case papers. It is also stated in the affidavit that treating patients in the hospital without case papers is a serious misconduct, and in a given situation, it may prove to be disastrous for the reputation of the hospital and even to the patients's life. Thus, the incident took place in presence of Dr. Kirit Mithawala. Moreover, Dr. Ashwin R. Viradia, Full-time Surgeon of the hospital has also filed an affidavit [page 67] and has supported the version of Dr. Mithawala. From the affidavits, it is also clear that departmental inquiry is contemplated against the appellant. The MLA against whom allegations are made, has also filed an affidavit [page69].

7. So far as transfers are concerned, some transfers may be on the ground of public interest, and some may be punitive. In the instant case, it is clear that appellant was found giving treatment to a patient not in the ward of the hospital where patients are treated but in a rest room for staff nurse. Not only that that, but

she was found treating the patient without being admitted in the Hospital. No case papers were found at the relevant time. It is clear that patient was being treated not under supervision of medical officer. Such act cannot be allowed and therefore the transfer is in public interest. Thus, the yardstick has to commensurate with facts and circumstances of each case. Taking totality of the facts before us if considered, it cannot be said that the transfer is not in public interest.

8. As regards malafides, it is true that the MLA has addressed a letter, but the version of the MLA is supported by two Doctors who are in charge of the administration of the hospital. This Court, therefore, at this stage would not like to go into the question as to whether the contentions raised by the petitioner or by the other side are right or not because it is stated in the affidavit that departmental inquiry is under contemplation.

9. Looking to the facts and circumstances of the case indicated by us hereinabove, we are unable to say that the transfer in the instant case is punitive.

10. Mr. Nanavati further submitted that the learned Single Judge erred in not considering properly the decision in the case of SAHDEV vs. SAINIK SCHOOL SOCIETY reported in 1982 (1) GLR 149. In that case, the Court expressed a view that if the transfer is by way of punishment, opportunity should be given to the delinquent. In that case, there were adverse remarks against the delinquent which were never shown to him, which ultimately culminated into an order of transfer. Mr. Nanavati's contention is that when the transfer in the instant case is based on the letter written by the MLA, opportunity ought to have been given to the petitioner to show that the allegations are baseless. We cannot accept this contention for the reasons that two medical officers, in their sworn affidavits, have stated that the incident has taken place in their presence. Therefore, in the instant case, we would not like to interfere.

11. At the same time, even though we are not convinced by the submission of Mr. Nanavati that the appellant is a 'deserted woman', considering the education of the son of the appellant who is in 10th standard, the respondents should accommodate the appellant till the examination of her child in this term if there is vacancy in the TB Hospital or in any nearby hospital. We hope that as the examination is in the near future, action in this regard

will be taken by the respondents and communicated to the appellant at the earliest.

12. In the result, the appeal fails and is dismissed, with no order as to costs. Notice is discharged.

csm./ -----